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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,403	01/15/2004	Seren Frantz	RD 04001	6094
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RHODIA, INC. 8 CEDAR BROOK DRIVE CN 7500 CRANBURY, NJ 08512				
EXAMINER				
VENKAT, JYOTHSNA A				
ART UNIT		PAPER NUMBER		
1615				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/758,403

**Applicant(s)**

FRANTZ ET AL.

**Examiner**

JYOTHSNA A. VENKAT

**Art Unit**

1615

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5, 9 and 18-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 9 and 18-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

### **DETAILED ACTION**

Receipt is acknowledged of remarks filed on 3/20/08. Claims 1-5, 9 and 18-26 are pending in the application.

#### ***Claim Rejections - 35 USC § 103***

Claims 1-5, 9 and 18-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over U. S. Patent 4,486, 334 ('334).

Patent '334 teaches aqueous dispersion of pearlescent agent using the claimed pearlizing agent. See the abstract and see col.4, ll 33-34 for ethylene glycol esters. Patent at col.3, ll 15-45 teaches that that the composition can have surfactants, which can be cationic, anionic. Patent at col.3, ll 3-5 teaches that the surfactant can be used individually or combination two kinds or more. See col.4, ll 10-25 for the concentration of pearlizing agent and surfactant. See col.5, ll 1-20 and see example 3. Patent under this example teaches the claimed pearlizing agent and claimed cationic surfactant, which is C16-18, monoalkyl trimethyl ammonium chloride. Cetrimonium chloride is C16 monoalkyl trimonium chloride. Patent under examples 1-2 teaches the combination of anionic surfactant and pearlizing agent.

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare aqueous pearlizing concentrate using pearlizing agent, anionic surfactant and cationic surfactant taught by patent that the pearlizing agent can be combined with one or more surfactants. This is prima facie case of obviousness.

#### ***Response to Arguments***

Applicant's arguments filed 3/20/08 have been fully considered but they are not persuasive.

Applicants' argue:

“While Applicant acknowledges that Horiuchi discloses the use of cationic surfactants and the use of anionic surfactants, Applicant respectfully disagrees that Horiuchi teaches the combination of the use of both a cationic surfactant and an anionic surfactant in a pearling concentrate. Horiuchi, on the contrary, discloses that a “highly concentrated aqueous dispersion of a pearlescent agent is readily obtained by the aid of two essential steps, comprises solubilizing a pearlescent agent in an aqueous solution of a surfactant, at least about a half amount or at least a substantial amount thereof forming the middle phase liquid-crystal ....” (Col. 2, II 16-21) (emphasis added). In other words, Applicant submits that Horiuchi discloses the use of only one type of surfactant (e.g., cationic, anionic or non-ionic) with a pearlescent agent. While Horiuchi briefly mentions that surfactants can be used “individually or as a combination of two kinds or more” (Col. 3, II. 67-8), such a reference, when read in the context of Horiuchi as a whole, is to the use of one or more surfactants of the same kind, e.g., two or more of a cationic surfactant or two or more of an anionic surfactant or two or more of a non-ionic surfactant. In support, all of the examples listed in Horiuchi disclose the use of only one type of surfactant in combination with a pearlescent agent. Example 1 discloses the use of only one type of surfactant, alpha olefinsulfonate, which is an anionic surfactant. (Col. 5, II 38-39) Example 2 discloses the use of one type of surfactant, sodium polyoxyethylene lauryl ether sulfate, which is a non-ionic surfactant (Col. 5, 1157-59). In fact, in Example 2,

one type of surfactant (anionic) was replaced by an entirely different type of surfactant (non-ionic). Example 3 discloses the use of only one type of surfactant, C18 -C18 mono alkyl trimethyl ammonium chloride, which is a cationic surfactant (Col. 6, 111-2). Example 4 discloses the use of only one type of surfactant, lauryl dimethyl carboxymethyl ammonium betaine, which is a cationic surfactant (Col. 6, 115-16). Finally, Example 5 discloses the use of only one type of surfactant, polyoxyethylene di (stearic acid) ester, which is a non-ionic surfactant. All of the aforementioned examples list the use of only one type of surfactant.

Accordingly, Applicant respectfully submits that a person having ordinary skill in the art would not have found the present invention obvious in view of the disclosure of Horiuchi because Horiuchi fails to disclose or suggest the use of both a cationic surfactant and an anionic surfactant required by Applicant's claim".

In response to the above argument, patent at col.3, 11 6-8 does not imply that "combination of surfactants of two kinds or more" means that the surfactant should be of the same kind. Patent clearly teaches that the "combination of two kinds or more" means it can be **two different types of surfactants.**

Patent at col.3, 11 3-14 teaches:

The surfactant used in the invention is not particularly limited to a specific one but may be any one of known substances which can form the middle phase including anionic, cationic, amphoteric and nonionic surfactants. They may be used either individually or as a combination of two kinds or more. Those surfactants incapable of forming the middle phase, such as the fatty acid diethanolamides, are not suitable. Even when such a surfactant is used as combined with one or more of other surfactants, the amount thereof should be limited in such a range that the formation of the middle phase can be ensured.

Patent clearly teaches the combination of two different types of surfactants and teaches regarding the amounts of two types of surfactants. The disclosure above refers to two different types of surfactants and not to two surfactants of the same kind.

In response to applicants' argument that none of the examples teach the combination of anionic surfactant and cationic surfactant, reference is valid for the entire disclosure and not limited to examples.

Patent clearly teaches one requirement, which is formation of middle phase. Patent at col.5, ll 15-20 teaches that that aqueous dispersion of the pearlizing agent can be prepared using cationic surfactant and known work in the field of endeavor may prompt variations of it, since the variations are predictable to one skilled in the art. In the instant case modifying the patent '334 using one type of surfactant (either an anionic or cationic) to two different types of surfactants (combination of anionic and cationic) is obvious to one of ordinary skill in the art expecting that aqueous pearlizing concentrate with cationic and anionic surfactant can be used in any detergent and toiletry formulations and the detergent and toiletry formulations have excellent pearlescence.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JYOTHSNA A VENKAT /  
Primary Examiner, Art Unit 1615